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*Attorneys for Plaintiff*

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JACOB MEIER, individually and on behalf of a class of similarly situated individuals,	)	Case No.
	)	
	)	<b>CLASS ACTION</b>
	)	<b>COMPLAINT</b>
Plaintiff,	)	
	)	<b>Violation of the Telephone</b>
	)	<b>Consumer Protection Act (47</b>
v.	)	<b>U.S.C. § 227, et seq.)</b>
	)	
	)	
POPEYES LOUISIANA KITCHEN, INC., a Minnesota corporation,	)	<b>DEMAND FOR JURY TRIAL</b>
	)	
Defendant.	)	
	)	

**CLASS ACTION COMPLAINT**

Plaintiff, Jacob Meier, brings this Class Action Complaint against Defendant, Popeyes Louisiana Kitchen, Inc. ("Popeyes"), to stop Defendant's practice of transmitting unauthorized text message calls to cellular telephones

Class Action Complaint

1 and to obtain redress for all persons injured by its conduct. Plaintiff, for his Class  
2 Action Complaint, alleges as follows based upon personal knowledge as to  
3 himself and his own acts and experiences, and as to all other matters, upon  
4 information and belief, including investigation conducted by his attorneys.

### 5 **NATURE OF THE CASE**

6 1. In an effort to promote its fast-food restaurants, Defendant has  
7 engaged in an invasive and unlawful form of marketing: the transmission of  
8 unauthorized advertisements in the form of “text message” calls to the cellular  
9 telephones of consumers throughout the country.

10 2. By effectuating these unauthorized text message calls (hereinafter,  
11 “wireless spam” or “SMS Messages”), Defendant has violated consumers’  
12 statutory and privacy rights and has caused consumers actual harm, not only  
13 because consumers were subjected to the aggravation and invasion of privacy  
14 that necessarily accompanies wireless spam, but also because consumers  
15 frequently have to pay their cell phone service providers for the receipt of such  
16 wireless spam.

17 3. In order to redress these injuries, Plaintiff, on behalf of himself and  
18 a class of similarly situated individuals, brings this suit under the Telephone  
19 Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”), which prohibits  
20 unsolicited voice and text calls to cellular phones.

21 4. On behalf of the class, Plaintiff seeks an injunction requiring  
22 Defendant to cease all wireless spam activities and an award of statutory or actual  
23 damages to the members of the class, together with costs and reasonable  
24 attorneys’ fees.



1 increasingly looked to alternative technologies through which to send bulk  
2 solicitations cheaply.

3 11. One of the newer types of such bulk marketing is to advertise  
4 through Short Message Services. The term “Short Message Service” or “SMS”  
5 describes a messaging system that allows cellular telephone subscribers to use  
6 their cellular telephones to send and receive short text messages, usually limited  
7 to 160 characters.

8 12. An “SMS message” is a text message call directed to a wireless  
9 device through the use of the telephone number assigned to the device. When an  
10 SMS message call is successfully made, the recipient’s cell phone rings, alerting  
11 him or her that a call is being received.

12 13. Unlike more conventional advertisements, SMS calls, and  
13 particularly wireless spam, invade consumers' privacy and can actually cost their  
14 recipients money, because cell phone users such as Plaintiff must pay their  
15 respective wireless service providers either for each text message call they  
16 receive or incur a usage allocation deduction to their text plan, regardless of  
17 whether or not the message is authorized.

18 14. Certain marketers use this new technology to create “mobile alerts,”  
19 or recurring programs in which text messages are automatically sent *en masse* to  
20 persons within a subscribed database. The content and parameters of such  
21 programs are set by the content providers themselves and frequently appear in  
22 the initial text message sent. Recurring mobile alerts are subject to the TCPA  
23 and the same regulations promulgated by the FCC as other automated calls or  
24 text messages to cellular telephones.

25 15. Beginning at least as early as 2009, and continuing to the present,  
26 Popeyes undertook a misguided effort to increase sales by causing the mass  
27 transmission of spam text message advertisements in the form of mobile alerts to  
28

1 the cell phones of those whom it hoped were potential customers of its  
2 restaurants.

3 16. On or about January 21, 2015, Plaintiff responded to an  
4 advertisement by Defendant and enrolled in Defendant's mobile alert program  
5 by sending a text message containing the phrase "Love that chicken" to the short  
6 code "31286."

7 17. Shortly after sending the text message as described in Paragraph 16  
8 above, Plaintiff's cell phone rang, indicating that a text message call was being  
9 received. The message Plaintiff received was an automated confirmatory text  
10 message from Defendant. The body of the text message read:

11 If you're interested in receiving LOVETHATCHICKEN  
12 mobile alerts, please reply Y to join. Up to 2/month.  
13 Msg&data rates may apply. Reply HELP for help.  
14 Msg&data rates may apply

15 18. In the text message transmission that Plaintiff received, the "from"  
16 field was identified as "31286," which is an abbreviated telephone number known  
17 as an SMS short code operated by Defendant's agents. The use of an SMS short  
18 code by Defendant's agents enabled Defendant's mass transmission of wireless  
19 spam to lists of cellular telephone numbers.

20 19. Based on the representations made by Defendant in the text message  
21 identified in paragraph 17 above, including specifically the limitation on the  
22 number of monthly text messages to be sent by Defendant, Plaintiff replied to  
23 Defendant's text message with a text message stating "Y".

24 20. After responding to the text message identified in paragraph 17,  
25 Plaintiff began to receive monthly automated text messages from Defendant  
26 containing generic advertisements for various products and sales.

27 21. Defendant's confirmatory text message identified in paragraph 17  
28 above explicitly states that subscribers would be sent no more than two (2) text

1 messages per month and is intended to induce consumers, including Plaintiff, to  
2 enroll in its automated messaging program.

3 22. However, Defendant sent at least three (3) text message  
4 advertisements to Plaintiff's cellular telephone during the month of April 2015.  
5 Specifically, Plaintiff received text messages by or on behalf of Defendant on  
6 April 7, April 14, and April 28. Each of these text messages was sent  
7 automatically and instantaneously by Defendant through the use of an automatic  
8 telephone dialing system from the short code 31286 and contained a generic non-  
9 personalized advertisement.

10 23. Because the initial opt-in message that Defendant sent to Plaintiff  
11 stated that he would receive no more than two (2) messages per month, any  
12 additional messages beyond the first two messages he received in any given  
13 month were unauthorized and sent without Plaintiff's consent in violation of the  
14 TCPA.

### 15 **CLASS ACTION ALLEGATIONS**

16 24. Plaintiff brings this action on behalf of himself and a nationwide  
17 class (the "Class"), defined as follows: All persons in the United States and its  
18 Territories who, within four years prior to the commencement of this litigation,  
19 were sent more than two (2) text messages in a single month by or on behalf of  
20 Defendant to their cellular telephone, wherein said text messages were sent using  
21 an automatic telephone dialing system.

22 25. Upon information and belief, there are hundreds, if not thousands,  
23 of members of the Class such that joinder of all members is impracticable.

24 26. Common questions of law and fact exist as to all members of the  
25 Class, and such questions predominate over questions affecting Plaintiff or  
26 individual members of the Class. Common questions for the Class include, but  
27 are not limited, to the following:

- a. Did Defendant and/or its agents send one or more unauthorized text message advertisements to members of the Class?
- b. Did Defendant and/or its agents use an automatic telephone dialing system to transmit the text message advertisements at issue?
- c. Did Defendant and/or its agents transmit text message advertisements to persons who did not provide Defendant with prior express consent to receive such messages?
- d. Did Defendant and/or its agents transmit more than two (2) text messages in any single month to members of the Class?
- e. Did Defendant and/or its agents transmit in any period of time more text messages than Defendant represented would be sent in that period of time?
- f. Did the wireless spam distributed by Defendant violate the TCPA?
- g. Are the members of the Class entitled to treble damages based on the willfulness of Defendant's conduct?
- h. Should Defendant be enjoined from engaging in such conduct in the future?

27. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions, and Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other members of the Class.

1           28. Defendant has acted and failed to act on grounds generally  
2 applicable to the Plaintiff and the other members of the Class in distributing the  
3 wireless spam at issue, requiring the Court's imposition of uniform relief to  
4 ensure compatible standards of conduct toward the members of the Class and  
5 making injunctive or corresponding declaratory relief appropriate for the Class  
6 as a whole.

7           29. The factual and legal bases of Defendant's liability to Plaintiff and  
8 to the other members of the Class are the same, resulting in injury to the Plaintiff  
9 and to all of the other members of the Class as a result of Defendant's unlawful  
10 distribution of the wireless spam alleged herein.

11           30. Absent a class action, most members of the Class would find the  
12 cost of litigating their claims to be prohibitive and would have no effective  
13 remedy. The class treatment of common questions of law and fact is also superior  
14 to multiple individual actions or piecemeal litigation in that it conserves the  
15 resources of the courts and the litigants, and promotes consistency and efficiency  
16 of adjudication.

17                                   **FIRST CAUSE OF ACTION**  
18                   **Violation of the Telephone Consumer Protection Act**  
19                   **(47 U.S.C. § 227, et seq.) on behalf of the Class**

20           31. Plaintiff incorporates by reference all of the foregoing allegations as  
21 if fully set forth herein.

22           32. Defendant directed the placement of unauthorized commercial text  
23 message calls to a list of wireless telephone numbers of Plaintiff and the other  
24 members of the Class using equipment that had the capacity at the time the calls  
25 were placed to store or produce telephone numbers to be called using a random  
26 or sequential number generator and to automatically dial such numbers without  
27 human intervention.





Attorneys for Plaintiff Jacob Meier,  
individually and on behalf of a class of  
similarly situated individuals

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**JURY DEMAND**

Plaintiff requests trial by jury of all claims that can be so tried.

DATED: November 2, 2015

PARISI & HAVENS LLP

By: 

David C. Parisi

Suzanne Havens Beckman

Attorneys for Plaintiff Jacob Meier,  
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